



OUTAGAMIE COUNTY

410 S. WALNUT ST. APPLETON, WISCONSIN 54911

OFFICE OF THE COUNTY EXECUTIVE

James P. Schuette, County Executive

Gene Lillge, Executive Administrator
Lori O'Brien, Executive Secretary

Telephone 920/832-1684

FAX 920/832-1534

E-MAIL OUTACTY@ATHENET.NET

FCC MAIL ROOM

October 27, 1997

RECEIVED

OCT 31 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Topic: MM Docket No. 97-182: Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities

I write in opposition to the proposed Federal Communications Commission (FCC) rule which would preempt most local government authority over the zoning of television and radio broadcast towers. Please consider:

- ▶ Zoning is a responsibility of local governments. Federalism and the Constitution dictate that it remains so.
- ▶ The FCC has no specific legal authority in the Telecommunications Act to preempt local zoning authority.
- ▶ Outagamie County operates a commercial airport — removing local government's role in zoning could have a profound effect on airport/airspace safety with erection of towers close to airports.
- ▶ The time limits outlined in the proposed rule are totally unrealistic given the time which local governments allow for action on zoning requests. This is even more of a problem given the potential controversial nature of an extremely tall broadcast tower. The automatic granting of a zoning request if a deadline was missed could threaten life and property.
- ▶ The proposed rule goes far beyond preempting local authority in regard to digital television towers — the presumed impetus for the rule. It includes radio broadcast towers and broadcast transmission facilities, the latter of which could include all types of buildings, such as broadcast stations that are large buildings employing substantial numbers of people.

No. of Copies rec'd
List ABCDE

043

Office of the Secretary
Federal Communications Commission
October 27, 1997
Page2

- ▶ Use of the terms "expressly stated health or safety objective" as the only grounds for denial could mean that most local governments may have to rewrite their zoning codes to meet this criteria.
- ▶ Aesthetics would no longer be a reason to deny a zoning application.
- ▶ Land use would no longer be a reason to deny a zoning application.
- ▶ For the first time, the FCC would be the venue of appeal if a zoning application was denied. This would turn the FCC into a national zoning board. Traditionally, applicants unhappy with zoning decisions have always had to appeal to the courts.
- ▶ There has been no factual basis demonstrated that local governments are the obstacle for the roll-out of the new digital television technology. In fact, some local governments, including Outagamie County, have not even been approached by the industry to discuss the need for larger and modified towers.

I urge that this rule be withdrawn or, in the alternative, that it be amended to maintain local governments' authority over their traditional and Constitutional land use and zoning practices. Do not preempt this authority.

Thank you for your consideration.

Sincerely,



James P. Schuette
Outagamie County Executive

JPS:efl

Copies: Senator Herb Kohl
 Senator Russ Feingold
 Congressman Jay Johnson
 Congressman Tom Petri
 National Association of Counties



RON WILSON
County Administrator

County of Page Board Of Supervisors

117 SOUTH COURT STREET
LURAY, VIRGINIA 22835
(540) 743-4142
FAX (540) 743-4533

Supervisors

Robert P. Good, Chairman
C. Earl Hilliard, Vice Chairman

Nora Belle Comer - District 1
Allen L. Louderback - District 2
Allen J. Cabbage - District 3
C. Earl Hilliard - District 4
Robert P. Good - District 5

OVERNITE MAIL VIA UPS

October 30, 1997

William F. Caton, Acting Secretary
Office of the Secretary, Room 222
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton:

I am writing to express Page County's opposition to Case Number 97-182 regarding local zoning issues involving radio and television towers.

The Page County Board of Supervisors is requesting that all action pertaining to these cases be terminated and would also request that zoning issues of this nature be left to the authority of local governments.

This request is made on the following assumptions:

(1) That action from this rule would require local governments to act on all zoning and building permit requests for broadcast tower construction within 21 to 45 days, ignoring current local procedures on zoning requests. Failure to do so within these time limits would cause the request to be automatically granted.

(2) Even acting within these time constraints, the proposed FCC rule would preempt all local zoning and building permit requirements unless a local government could demonstrate the requirement was reasonable in order to meet health or safety objectives. Other requirements such as aesthetics, property values, and environmental considerations would be preempted entirely.

(3) Any broadcaster unhappy with the local decision could appeal directly to the FCC, rather than going through the court system which is the current practice.

Let me state for the record, that the County of Page provides a reasonable time for processing zoning requests, that all zoning requests are evaluated to determine the impact before requests are considered for approval, and that a process of appeal is in place.

No. of Copies rec'd
List ABCDE

William F. Caton
Acting Secretary
Federal Communications Commission
October 30, 1997

considered for approval, and that a process of appeal is in place.

Zoning is a local issue that should remain in the hands of local governments and the communities in which they apply. All individuals in Page County are treated fairly and equally in their zoning requests. Actions, such as those described previously, would remove radio and television tower applicants from this process and would practically guarantee approval of all such requests, regardless of information presented to the contrary or the detrimental effect these may pose to the community.

Your consideration of Page County's request is appreciated.

Sincerely,



RON WILSON
COUNTY ADMINISTRATOR

cc: The Honorable Charles S. Robb
The Honorable John Warner
The Honorable Frank Wolf
Virginia Association of Counties

**CITY of BEAVERTON**

DOCKET FILE COPY ORIGINAL

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 TEL: (503) 526-2481 V/TDD FAX: (503) 526-2571

**ROB DRAKE
MAYOR****RECEIVED**

OCT 31 1997

97-182

October 30, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Reed Hundt, Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, DC 20554

Dear Chairman Hundt:

This letter is in response to proposed rule making by the Federal Communications Commission (FCC), proposing preemption of local authority over television and radio broadcast tower siting and construction. The City of Beaverton is strongly opposed to any preemption by the FCC of local citizen input and local government decision-making and regulatory control.

Beaverton is the Portland metropolitan area's third largest city. We have a time-honored commitment and successful experience with active citizen involvement and working cooperatively with the development community to assure high quality, compatible development. Oregon's land use system encourages citizen involvement and, at the same time, mandates statutory completion of land use actions within 120 days of an application being submitted to local governments. This time limit is known as the 120-Day Rule. Appropriate public review is accomplished within this reasonable period of time, yet the developer is assured the automatic statutory "go ahead" if the local jurisdiction doesn't complete the public process in the mandated time period. Everyone wins!

The proposed rule making by the FCC would send the public involvement process and reasonable local review back to the dark ages. It would severely erode trust in and access to local government decision-making processes. This is the last direction all governments should be heading.

As proposed, the permit process would be limited to a 21 to 45 day period. Local requirements dealing with local zoning and building permits could be preempted. Requirements such as aesthetics, property values and environmental considerations would be preempted entirely. Any appeal of a local decision would be directly to the FCC, rather than through the court system which is the current process. Local governments would be required to defend themselves at the FCC in Washington, DC, rather than in local State or Federal courts. How could all of this be possible?

Please carefully consider the negative consequences of the proposed FCC rule making. Keep all regulatory requirements for zoning and building permits in the hands of local governments where they belong.

Sincerely,

Rob Drake
Mayor

No. of Copies rec'd _____
List ABCDE _____

**VIGO COUNTY AREA PLANNING DEPARTMENT
201 CHERRY STREET
TERRE HAUTE, IN 47807**

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 31 1997

FCC MAIL ROOM

Phone (812)462-3354

Fax (812)2343248

October 27, 1997

Honorable William F. Caton, Secretary
Federal Communications Commission
1919 M.St., N.W.
Washington, DC 20554

RE: Objection to Proposed Rule
MM Docket No. 97-182 and FCC Docket No. 97-296
Preemption of State and Local Zoning and Land Use
Restrictions on the Siting, Placement and Construction
of Broadcast Transmission Facilities

Dear Secretary Caton:

The Vigo County Area Planning Department (VCAPD) objects to the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities as proposed in the above referenced Dockets. The Area Planning Department offers the following comments in support of our objection:

1. The Notice of Proposed Rule Making(NPRM) specifically preempts a state or local authority's regulations that impair a proponents ability to modify or construct their facilities unless, the state or local authorities can demonstrate that their objections are related to health and safety objectives. However, the NPRM provides no guidance as to how this demonstration is to be achieved. Additionally, assuming a qualified authority is used in deciding whether a state or local authority's demonstration has been successful or not, the NPRM does not define who this authority might be or, again, how the determination is to be accomplished. Rather that require that state and local authorities prove that a particular proposal meets the health or safety exception provision (or any other state/local provision for that matter) the proponents of the transmission facilities should carry the burden of proof in demonstrating that it will, in fact, be impossible to meet the roll-out schedule if action be a particular state or local authority does not occur in a given timeframe. Similar provisions currently exist in Indiana Code as it pertains to the granting of a variance from the development standards in a zoning ordinance after the petitioner has shown one of the three(3)stated hardships.
2. Although the NPRM relies almost exclusively on the Digital Television (DTV) roll-out schedule as justification for utilizing the preemptive authority it claims to possess, the NPRM is not limited to the DTV technology and, in fact, specifically includes other types of transmission towers. Furthermore, the "other types" of towers specifically included in the NPRM are not even required to be affiliated with the DTV roll-out effort. This appears to be an effort to exploit the proposed rule change effort by hiding behind DTV justification and thereby circumventing current state and local zoning for non-DTV proposals.

No. of Copies rec'd
List ABCDE



Mr. William F. Caton

October 27, 1997

page two

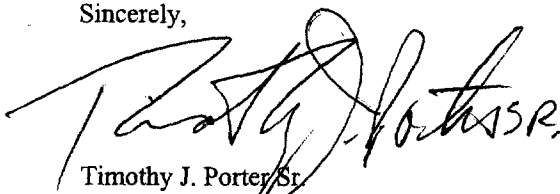
The use of preemptive authority for virtually every type of transmission tower would, effectively, declare "open season" on airport facilities and planning jurisdictions whose planning efforts conflict with the presence of said transmission facilities. These ever-lasting and negative impact on local authority to plan for our communities are inappropriate for a single technology that is to be fully deployed in a matter of a few years.

3. The time limitations for state and local action presented in the NPRM, in many instances, will create a requirement for additional staff and/or more zoning board meetings and create additional expenses to units of government. Unless those costs can be directly billed to the proponents of transmission towers, the proposed rule amounts to an unfunded federal mandate which, of course, is illegal. This is especially disturbing since many delays in the zoning approval process are a direct result of the proponent providing either, inadequate or inaccurate information, or no information at all, to begin with.

In conclusion, it is feared that the proposed rule, as written, is woefully vague as it relates to the exceptions for health and safety and it appears to provide significant loopholes for broadcasters to slip through in the zoning approval process. The Vigo County Area Planning Department has devoted hundreds of hours to the writing and passage of a county zoning ordinance so that local citizens could speak out in a public meeting concerning development of any kind in their neighborhood. This proposed rule would take away that right! The proposed rule also severely jeopardizes the mechanisms designed to protect our country's investment in the aviation sector of our economy from the reckless encroachment of transmission towers. Vigo County has invested significantly in Hulman Regional Airport and this proposed rule would greatly jeopardize that investment.

For these reasons, the Vigo County Area Planning Department objects to the proposal and urges the FCC to deny the petition for the proposed rule change.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Porter Sr.", is written over the typed name and title.

Timothy J. Porter Sr.
Executive Director
Vigo County Area Planning Dept.



**LEE COUNTY
PORT AUTHORITY**

Port of Entry #1881

October 29, 1997

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Comments on Notice of Proposed Rule Making
MM Docket No. 97-182

Robert M. Ball, A.A.E.
Executive Director

James G. Yaeger
Port Authority Attorney

**Board of Port
Commissioners**

John E. Manning
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Dear Sir or Madam:

The Lee County Port Authority wishes to make the following comment regarding the proposed preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities.

Under "Siting Procedures," the proposed rule allows local governments or instrumentalities, thereof, thirty (30) days to act on written requests "to consolidate two or more broadcast transmission facilities on a common tower other structure (sic), whether the tower or other structure is pre-existing or new; or to increase the height of an existing tower." The proposal further states, "The failure of a state or local government or instrumentality, thereof, to act on any request within [this period] will result in the request being deemed granted."

Through a local ordinance, the Lee County Port Authority currently coordinates the local review of such tall structures with the local government and the Federal Aviation Administration. While action on most such requests takes place in much less than thirty days, occasionally information on the request is incomplete, incorrect, or missing. In those cases, thirty days to coordinate a review of a new tower location may well be insufficient.

The Port Authority reviews such requests to ensure that the proposed tower follows the provisions of Part 77 of the Federal Aviation Regulations and does not become an obstruction affecting navigable airspace within our County. Occasionally, proponents of such towers have not coordinated the tower location with the FAA, or have provided conflicting information to the FAA and the local government. In those cases, the tower proponent is referred to the FAA.

DOCKET FILE COPY ORIGINAL

16000 Chamberlin Pkwy.
Suite 8671
Fort Myers, Florida 33913-8899
(941) 768-1000

(941) 768-4377

Writer's Direct Dial Number

Fax (941) 768-4912

RECEIVED
OCT 31 1997
FEDERAL COMMUNICATIONS COMMISSION

No. of Copies rec'd
List ABCDE

Page Two
Office of the FCC Secretary

October 29, 1997

The Port Authority believes that local officials are in the best position to verify the information provided by tower proponents regarding specific tower locations, heights, and construction safety issues. This local review, in many cases, supplements the FAA review, but it may take more than 30 days.

Thank you for this opportunity to comment.

Sincerely,

LEE COUNTY PORT AUTHORITY

A handwritten signature in dark ink, appearing to read "William B. Horner", is written over the printed name.

William B. Horner, AICP
Principal Planner



NAPA COUNTY

CONSERVATION • DEVELOPMENT and PLANNING DEPARTMENT

Jeffrey Redding
Director

1195 Third Street, Room 210 • Napa, California 94559
Telephone 707/253-4416 FAX 707/253-4336

October 30, 1997

Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street NW
Washington, DC 20554

SUBJECT: Preemption of State & Local Zoning & Land Use Restriction On The Siting, Placement, & Construction of Broadcast Station Transmission Facilities (Docket Item No 97-182)

Dear Commissioners:

I have just become aware of the above-referenced proposal which would completely preempt local zoning authority over television and radio broadcast towers. My office does not oppose reasonable federal regulations dealing with the provision of telecommunications services, such as those embodied in many of the Commission's prior decisions. We do, however, oppose unreasonable and poorly thought out proposals such as the current one.

The problems with the proposal as drafted are as follows. First, the need to preempt local control has not been established. Local control of the siting of broadcast towers has been around for approximately 50 years. The provision of radio and TV service over this time has clearly not been significantly impeded by this control. Second, precisely where a broadcast tower should be located, and to a lesser extent its design, is dependent on local conditions such as surrounding land use, site-specific environmental constraints, local hazards, etc. Local government, with its knowledge of local conditions, is much better equipped than the federal government to deal with these issues. Third, the processing time frames suggested are so short as to effectively preclude most local governments from acting on zoning, and to a lesser extent, building, permit requests, thereby providing for automatic approval of basically anything a broadcaster proposes. Finally, the proposal that a broadcaster could appeal a local decision directly to the FCC would effectively establish the Commission as a national zoning appeals board. The further suggestion that all such appeals should be heard in Washington DC would effectively preclude local governments throughout most of the United States from defending their decisions; for the money to send staff to Washington is, in most instances, simply not available.

If you have any questions regarding these comments, please call me at the number listed above. Please also provide me with copies of all notices, reports and the final order prepared. Thank you in advance for your cooperation in this matter.

Respectfully Yours,

Jeffrey R. Redding
JEFFREY R. REDDING
Director

cc: Napa Co Board of Supervisors
Bob Fogel, National Association of Counties
DeAnn Baker, California State Association of Counties

No. of Copies rec'd
List ABCDE